A.E.R. (68)

18/8

**HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR**

**WRIT PETITION NO. 2178 OF 2003**

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| **PETITIONER** | | Smt. Shakuntala, Wife of Munnalal Jaiswal, Resident of Parsuram Ward Bhatapara, District Raipur (C.G.). |
| | **- Versus-** | |
| **RESPONDENTS** | 1. | State of Chhattisgarh, Through the Secretary, Department of Excise, D.K. Bhawan, Raipur (C.G.). |
| | 2. | The Collector, Raipur (C.G.). |
| | 3. | The District Excise Officer, Raipur (C.G.). |

POST FOR ORDER ON 18th August, 2003.

Sd/-
L.C. Bhadoo
Judge

(69)

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Present:-
Shri B.K. Rawat, counsel for the petitioner.

Shri Sanjay K. Agrawal, Deputy Advocate General for the State/respondents.

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## ORDER

(Passed on 8th August, 2003)

**By Justice L. C. Bhadoo**

1. The petitioner who is a hotel bar licence holder by this petition filed under Article 226 of the Constitution of India calls into question the order of the Collector, Raipur, passed on 22-6-2003 cancelling the licence FL-3 held by the petitioner at Parsuram Ward, Bhatapara.

2. The petitioner's petition is that the petitioner has been granted licence No. 35 under FL-3 for the year 2003-04 according to the Foreign Liquor Rules, 1996 on payment of licence fee of Rs. 2,50,000/- at Parsuram Ward, Bhatapara, within the municipal limit for the period from 30th April 2003 to 31st March 2004. Copy of the licence is Annexure-P/1. There was a dispute between the two groups of ladies of the localities for the reason that both the groups are divided into two political parties. One group of

the ladies were taking signatures of the ladies of the locality against running of the Beer bar Licence of the petitioner. The other groups were also taking signatures in favour of the petitioner.

3. On 22-6-2003 the memorandum was submitted by some of the ladies to the Collector requesting for cancellation of the licence of the petitioner in respect of FL-3 licence. On receiving the complaint, the Collector has passed the final order on the same date i.e., 22-6-2003 cancelling the licence of the petitioner without issuance of any show cause notice to the petitioner or without affording any opportunity of hearing as contemplated under sub-Section 1-A of Section 31 of Chhattisgarh Excise Act, 1915.

4. The order of the Collector passed on the application has been obtained by the petitioner from the office of the Excise Officer, Raipur. In pursuance of the order of the Collector on the same day the entire stock of the petitioner has been seized by the Excise Department, Bhatapara which is also filed herewith as Annexure-P/4.

5. The order of the Collector and the seizure of the stock is patently illegal and without jurisdiction being violative of Article 14 and 19 (I)(g) of the Constitution of India.

6. As the order cancelling the licence of the petitioner has been passed without affording an opportunity of hearing which is violative of principles of natural justice and such action of the respondents is amenable by issuance of suitable writ under Article 226 of the Constitution of India. It is, therefore, prayed that this Hon'ble Court may kindly be pleased to quash the order of the Collector, Raipur dated 22-6-2003 cancelling the licence FL-3 held by the petitioner.

7. Return has been filed on behalf of the respondents stating that on 22-6-2003 the Collector, Raipur under the instructions of the State Government organized a "Samadhan Shivir" at Bhatapara. The Government in this behalf has issued instructions, a copy of which is filed herewith as Annexure-R/1, by which the Collectors have been instructed to dispose of the complaint/applications on the spot. On that day women of the area

made serious complaint in the camp wherein they demanded that the licence granted to the petitioner should be cancelled. It is respectfully submitted that 90% women of the area also made the demand on 19-5-2003 and on 30-5-2003. The main ground of the objection was that the place for which the licence was granted was near a temple and that it was situated in a residential area. Immediately, an inspection of the spot was made and it was found that the hotel was situated in a residential area and there was a temple nearby. It is also respectfully submitted that the rules of general application provide for location of the shops and licenced premises. The place was an objectionable one in accordance with the said rules. It was also observed in the "Samadhan Shivir" that if no action is taken on the complaint there was a strong likelihood of breach of peace and tranquility of the area leading to law and order situation.

8. It may be pointed out that the cancellation is not an out and out cancellation. An option has been given to the petitioner to apply for any other place as would be evident from the document Annexure-P/3. It is submitted that the petitioner has an alternative remedy to challenge the order in an appeal which is provided under the rules formulated under Section 62 of the Chhattisgarh Excise Act, 1915. The general licence conditions have been formulated under the powers conferred by the Section 62 of the Act, 1915. In condition No.5 the Collector (the Licencing Authority) is authorized to transfer the shop from one local area to another and also can order for closure of the shop. The petitioner has preferred this petition invoking extraordinary jurisdiction of this Hon'ble Court under Article 226/227 of the Constitution of India, therefore, the petition be dismissed.

9. I have heard Shri B.K. Rawat, counsel for the petitioner and Shri Sanjay K. Agrawal, Deputy Advocate General for the State / respondent.

10. It is not disputed that the Collector before cancelling the petitioner's licence had neither issued any notice requiring her to explain about the complaints of the women of the locality nor did the Collector gave her an opportunity in any other manner to meet the allegations. As such, the order of the cancellation of the licence is violative of the principles of

natural justice and the same is invalid and void. The power of the Licencing Authority is under Section 31 of the Act to cancel and suspend the licence and the function of the Licencing Authority granting and cancelling the licence is a quasi judicial function as has been held by the Madhya Pradesh High Court in **AIR 1969 MADHYA PRADESH 176**. The licencing authority (Collector) is authorized to cancel the licence either under Section 31 of the Excise Act, 1915 or under Rule 23 of the "Chhattisgarh Excise Settlement of Licences for Retail Sale of Country/Foreign Liquor Rules, 2002" on the grounds mentioned in these provisions of law and sub-section 1-A of Section 31 of the Excise Act and sub-rule 2 of the Rules 23 prescribes that

> **"Before cancelling the licence, issue show-cause notice to the licencee and afford him a reasonable opportunity of being heard".**

11. Admittedly, in this case no opportunity has been given to the petitioner herein before cancelling her licence.

12. The learned counsel for the respondents submitted that in this case the licence of the petitioner has not been completely cancelled, but an option has been given to the petitioner that if she wants then she is entitled to shift her shop.

13. A perusal of the Annexure-P/3 shows that the licence has been cancelled and the option has been given to the petitioner that if the petitioner wants then she can apply for another place, therefore, the liecnce has been cancelled without affording an opportunity to the petitioner and as has been held by the Division Bench of M.P. High Court in **AIR 1969 MADHYA PRADESH 176** in the case of **Sukhlal Sen Vs. Collector, District Satna and others** that:-

> **" .....a duty has been imposed upon the authority the duty to act judicially. It is necessarily follows that the authority must follow the requirements of natural justice and must give an opportunity to the licensee to meet the allegations of breaches of terms and conditions of the licence reported against him before canceling the licence."**

In that case also without affording the opportunity to the petitioner the licence was cancelled and the Court held that:-

> **"since the opportunity was not given to the petitioner it has to be held that the cancellation of the licence was invalid and void."**

Therefore, in this case also the licence has been cancelled without affording an opportunity to the petitioner, as such the order cancelling the licence Annexure-P/3, dated 22-6-2003 is invalid and void.

14. As far as the question of alternative remedy available to the petitioner is concerned that the petitioner ought to have filed an appeal before the Commissioner which was available to her under the Rules framed under Section 62 of the Act. On this point in the same decision the Madhya Pradesh High Court held that:-

> **".....the arguments advanced by the learned Government Advocate that the petitioner should not be granted any relief, as he did not avail of the alternative remedy of going up in appeal against the order of the Collector. The existence of an alternative remedy is not always a bar for issuance of a writ of certiorari. It is no doubt true that the High Court may refuse to exercise its jurisdiction under Article 226, if the petitioner did not avail of alternative remedies, but the rule requiring the exhaustion of alternative remedies before the writ will be issued is not a rule of law but is a rule of policy, convenience and discretion. The High Court will readily issue a writ of certiorari in a case where there has been a denial of natural justice; "**

and ultimately the Court held that:-

> **"since the principles of natural justice were not followed that being a fundamental defect and it would not be a sound exercise of discretion to refuse to interfere simply on the ground that the petitioner could have gone up in appeal."**

15. In the present case also the principles of natural justice has been violated, therefore, there is no force in the argument of the learned Deputy Advocate General that the petitioner ought to have availed the alternative remedy of appeal.

16. In the result, the petition of the petitioner is allowed. The impugned order of the Collector, Annexure-P/3 dated 22-6-2003 is quashed.

17. Cost is made easy.

Sd/-
L.C. Bhadoo
Judge

Barve*